

JUSTICE AND SECURITY ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 2: Consequential Provision:

Part 1: Oversight of intelligence and security activities

137. This Part of Schedule 2 makes consequential provision concerning the oversight of intelligence and security activities. It repeals the provisions in the Intelligence Services Act 1994 relating to the existing ISC (*paragraph 1*) and makes consequential amendments to the Northern Ireland Act 1998 (*paragraph 3*) and the Equality Act 2006 (*paragraph 6*). Those Acts previously referred to the definition of “sensitive information” in the Intelligence Services Act 1994.
138. The Data Protection Act 1998 (the “DPA”) applies to Parliament as it applies generally, save that: where the purpose for which, and manner in which, data is processed is determined by, or on behalf of, either House, then the data controller (the person upon whom most of the obligations under DPA fall) is the corporate officer of the relevant House (s. 63A DPA).
139. Since the ISC will be composed of MPs and Peers (see section 1(2)) who are appointed by each House of Parliament (section 1(3)), and it will be a statutory Committee of Parliament, the DPA could be interpreted as applying to the ISC as it applies to Parliament, with the data controller for the Committee being the corporate officer of the relevant House of Parliament (s. 63A DPA). This would not be appropriate. The sensitivity of much of the data handled by the ISC means that the corporate officers will not be entitled to have access to it, making it impossible for them to ensure that the requirements of DPA are followed. *Paragraph 2* therefore amends the DPA to disapply s. 63A DPA, so far as the ISC is concerned.
140. Both the House of Commons and the House of Lords are subject to the Freedom of Information Act 2000 (“FOIA”) (they are each listed in Schedule 1 to FOIA). For the reasons explained above in relation to the DPA, it is arguable that the ISC would be subject to FOIA. *Paragraph 5* avoids this consequence by amending references to the House of Commons and House of Lords in Schedule 1 to FOIA to make clear that they are not subject to that Act as regards information held by the ISC. This amendment preserves the status quo, in that FOIA did not apply to information held by the ISC created by the Intelligence Services Act 1994 either.
141. *Paragraph 5* also adds the ISC to the list of the bodies in section 23 of FOIA. The result of this is that ISC information (information which has been supplied to or by the ISC, whether directly or indirectly, or which relates to it) in the hands of another public authority subject to FOIA (the Foreign and Commonwealth Office or the Home Office, for example) will be exempt information for FOIA purposes. Section 23 is an absolute exemption, i.e. any information falling within the terms of the exemption can be withheld, without having to consider the public interest balance (s. 2 FOIA).

Part 2: Closed material procedure

142. This Part of Schedule 2 contains consequential provision concerning closed material procedures. The key provisions are as follows.
143. *Paragraph 8* amends the Senior Courts Act 1981 to increase judicial discretion by allowing the court to refuse an application for a jury where the case would involve section 6 proceedings, or to dismiss a jury in cases where one is being used but where section 6 proceedings are required. *Paragraph 7* makes corresponding provision for Northern Ireland.
144. *Paragraph 9* inserts a new section 6A into the Special Immigration Appeals Commission Act 1997 in order to apply sections 5 and 6 of that Act to the new sections 2C and 2D inserted by section 15. The purpose of this provision is to apply the statutory closed material procedure in that Act concerning the proceedings mentioned in new sections 2C and 2D.
145. *Paragraph 11* provides for an amendment to section 18 of RIPA to permit intercepted material etc to be adduced or disclosed within any section 6 proceedings. This mirrors the position for the proceedings already listed in section 18(1) of RIPA (such as SIAC proceedings or proceedings about terrorism prevention and investigation measures) for which there remain specific statutory closed material procedures. This paragraph also makes amendments to section 18 consequential upon the amendments to the Special Immigration Appeals Commission Act 1997 made by section 15.